IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTY FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 6673 of 2005

Between:

Tiffins Barytes Asbestos and Paints Limited, Suit 6, B. Kences Towers, Ramakrishna Street, North Usman Road, T. Nagar, Chennai - 600 017, Rep. by its G.P.A. Holder A. Raja Gopal.

..... PETITIONER

AND

1 State of Andhra Pradesh, Rep. by Secretary,
Industries and Commerce Department, Secretariat Buildings, Hyderabad.
2 The Director of Mines and Geology, Burgula Ramakrishna Rao Bhavan,
Secretariat Road, Hyderabad.
3 The Assistant Director of Mines & Geology, Formerly at Kadapa and now at Yerraguntla, Kadapa District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction, especially a Writ of Mandamus declaring that the proceedings initiated pursuant to the show cause notice bearing No. 1597/Vg/2001 dated 17-5-2001 as being illegal and arbitrary and without the authority in law and in the Alternative direct the respondents herein to conduct a fair and impartial enquiry by furnishing copies of the records seized by the Regional Vigilance and Enforcement Officer, Tirupathi dated 29-3-2001 by consequently setting aside the illegal demand notice dated 21-7-2001 bearing D.No. 1597/Vg/2001 issued by the third respondent herein and all further proceedings issued pursuant thereto and pass such other further and other orders as may be found expedient in the circumstances of the case.

Counsel for the Petitioner : MR. Y.N.LOHITA

Counsel for the Respondents : GP FOR INDUSTRIES & COMMERCE

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.6673 OF 2005

ORDER:

This writ petition is filed seeking a Writ of Mandamus declaring the proceedings initiated by the respondents pursuant to the show-cause notice dated 17-5-2001 as arbitrary and illegal and consequently to set aside the Demand Notice dated 21-7-2001 issued by the 3rd respondent.

The impugned notice dated 17-5-2001 was issued by the 3rd respondent herein alleging that the petitioner was indulging in unauthorised despatches of Barytes without valid permit and therefore calling upon to show-cause as to why action should not be taken for levying penalties under Section 21 of Mines and Minerals (Development and Regulation) Act, 1957 (for short, 'the Act').

It is not in dispute that consequent to the said show-cause notice, the third respondent has already passed an order dated 21-07-2001 under Section 21 of the Act whereunder the petitioner was required to remit Rs.2,17,02,755/- towards the evaded royalty together with the cost of the Mineral.

Now, this writ petition is filed on 28-3-2005 questioning the action of the third respondent in initiating proceedings under the show-cause notice dated 17-5-2001 contending that the impugned action is not in conformity with the provisions of the Section 21 (5) of the Act and consequently the 2nd respondent has no jurisdiction to initiate such proceedings. It is further contended that the entire action is in contravention of Section 23-B and Section 24(1)(d) of the Act.

Having heard the learned Counsel for the petitioner and having perused the material on record, I do not find any justifiable reason to entertain the writ petition at this stage since in pursuance of the impugned show-cause notice the third respondent has already passed an order on 21-7-2001. Against the said order, an alternative remedy is available under Section 30 of the Act by way of Revision and if the petitioner is aggrieved, he ought to have availed the said remedy. Having failed to exhaust the said alternative remedy and having kept quiet for more than 3 years, the petitioner cannot be permitted to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India at this stage.

It is also relevant to note that there is absolutely no plea in the affidavit filed in support of the writ petition explaining the delay of more than three years on their part in approaching this Court. It is true that the delay or laches is not an absolute bar to grant the relief, but in the absence of any explanation to justify the laches or delay on their part in approaching the Court, I am of the view that the petitioners are not entitled to claim the discretionary relief under Article 226 of the Constitution of India.

The Writ Petition is misconceived and accordingly dismissed. No costs.

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31st March, 2005.

gbs

To

1 The Secretary, State of Andhra Pradesh, Industries and Commerce Department, Secretariat Buildings, Hyderabad.
2 The Director of Mines and Geology, Burgula Ramakrishna Rao Bhavan, Secretariat Road, Hyderabad.
3 The Assistant Director of Mines & Geology, Formerly at Kadapa and now at Yerraguntla, Kadapa District.

4. Two CCs to G.P. for Industries & Commerce, High Court of A P Bldgs, Hyderabad (OUT).

5. Two CD copies.